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ADMITTED IN NEW YORK AND CALIFORNIA

November 22, 2023

VIA ECF

Hon. Naomi Reice Buchwald
United States District Judge
Southern District of New York
500 Pearl St.
New York, NY 10007-1312

ENDORSEMENT

*The resolution of all
discovery disputes is
referred to Judge Lehrburger.
Naomi Reice Buchwald
11/28*

Re: Export Development Canada v. East Coast Power & Gas, LLC
Case No. 21-cv-03758 (NRB) (RWL)

November 27, 2023

Dear Judge Reice Buchwald:

On behalf of judgment-creditor Export Development Canada (“EDC”), and at Judge Lehrburger’s suggestion,¹ we respectfully request clarification on whether *all* discovery disputes are referred to Judge Lehrburger, or only disputes concerning EDC’s first motion to compel (“MTC No. 1”). See, ECF Nos. 26, 27, 29, 30, 31, and 32 (letter briefs concerning MTC No. 1).

As noted in the parties’ prior letters, both EDC and judgment-debtor East Coast Power & Gas, LLC (“East Coast”) consent to the reference of discovery disputes. See, ECF No. 26, at ECF p. 3 (EDC’s consent); ECF No. 27, ECF p. 1, ¶ 2 (East Coast saying “we agree to the referral of discovery matters to a Magistrate Judge.”) On July 27, 2023, this Court entered an Order of Reference (the “Reference”), which encompassed EDC’s MTC No. 1. See, ECF No. 33. The parties now have several additional discovery disputes that are either outgrowths of EDC’s MTC No. 1, or that concern new discovery requests (for which we request clarification on the scope of the Reference), including:

1. Dispute concerning EDC’s First Requests for Production (“RFPs”) Nos. 1-32 (already pending before Judge Lehrburger);
2. Dispute concerning East Coast’s privilege log for EDC’s First RFPs (already pending before Judge Lehrburger);
3. Dispute concerning EDC’s first set of interrogatories (already pending before Judge Lehrburger);
4. Dispute concerning EDC’s Second RFPs, Nos. 33-49, and East Coast’s failure to serve a privilege log (partially² pending before Judge Lehrburger, clarification requested);

¹ See, ECF No. 37, ECF pp. 56:24–57:03 (August 15, 2023, hearing transcript).

² On August 15th, Judge Lehrburger held that “[w]ith respect to RFPs 4, 5, 6, 7, 8, and 13, [East Coast’s] objections . . . are sustained, without prejudice to [EDC] asserting more specific requests.” ECF No. 36, at ¶ 4. EDC’s Second RFPs include these “more specific requests,” and multiple additional requests. In addition, East Coast’s responses to EDC’s Second RFPs reference East Coast’s prior productions, which EDC maintains violate Judge Lehrburger’s August 15th Order (ECF No. 36) and directives (ECF No. 37).

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5. Dispute concerning EDC's second set of interrogatories (clarification requested); and
6. EDC's intended motion to establish procedures for the meet and confer process (clarification requested).

Because it appears East Coast has no assets to satisfy EDC's judgment, which now exceeds \$14 million (*see*, ECF No. 13), future proceedings are likely to consist entirely of discovery disputes, which have already been numerous and contentious. EDC also intends to serve multiple non-party subpoenas forthwith, which it expects East Coast will move to quash, as occurred with EDC's subpoena to ADP Payroll Services, Inc.³

As such, we respectfully request clarification concerning whether all existing *and future* discovery disputes (including, at present, disputes Nos. 4–6) should proceed before Judge Lehrburger, or whether we should seek relief pursuant to Your Honor's Individual Practices.

Respectfully submitted,

/s/ David M. Mannion

David M. Mannion

cc: James E. Brandt, Esq. (via ECF)

³ *See*, ECF No. 19 (East Coast's pre-motion letter to the Court).